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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,541	12/07/2001	Werner Schwarzbacker	5150-12PUS	3678

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EXAMINER

YEUNG, GEORGE CHAN PUI

ART UNIT PAPER NUMBER

1761

DATE MAILED: 03/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/009,541

Applicant(s)

SCHWARZBACKER ET AL.

Examiner

George C Yeung

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-47 ~~is/are~~ pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 25-34 and 37-47 ~~is/are~~ rejected.
- 7) ☒ Claim(s) 35 and 36 ~~is/are~~ objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: See Continuation Sheet.

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 24-31 and 46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention for the following reasons:

1. The phrase "may be regulated" recited in claim 25, line 9 is indefinite. The change of this phrase to --to regulate-- or --to control-- would obviate this rejection.
2. The phrase "can be varied" recited in claim 46, line 2 is also indefinite. The change of this phrase to --is varied-- would overcome this rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 25-27 and 29-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Drouet et al (French patent 2 599 344). Drouet et al disclose a method of regulating at least one of humidity and temperature in an enclosure such as a chamber, wherein shaped dough pieces are treated from an initial thawing phase to a rest phase, and then a fermentation phase, followed by a final cooking phase to form bread products. The method comprises the steps of providing a water guiding device consisting of steel or aluminum blades arranged in a substantially horizontal plane that

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forms a water path; continuously feeding water to the surfaces of the blades which includes means for allowing excess water on one blade to flow by gravity toward the blade immediately below, whereby the surfaces of the successive blades are covered with a film of water in the liquid state; regulating the flow rate of water which spreads over the surfaces of the blades; and circulating air over and between the successive blades and consequently laps against the film of water which has been retained on the surface of each blade, while entraining the water into the atmosphere as it evaporates. With regard to claim 26, the claimed limitation "said water guiding device is provided with an angle of inclination" reads on the blade 33 with a slightly raised edge 32 as shown in Figure 4 of Drouet et al. With regard to claim 27, the claimed limitation "obstacles in said at least one waterway" reads on the vertical elements 5, 6, 7 and 8 in the blades 1, 2, 3 and 4 as shown in Figure 2 of Drouet et al.

Claims 32-34, 37-41, 43-45 and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by Drouet et al (French patent 2 599 344). Drouet et al show all the structural elements set forth in apparatus claims 32-34, 37-41, 43-45 and 47. Note that the claimed guide strips set forth in claims 38-40 read on the blades 1, 2, 3, 4 as shown in Figure 2 of Drouet et al. Further note that the claimed interruptions set forth in claim 44 read on the hollows 21, 22 and 23, and the claimed obstacles set forth in claim 45 read on the vertical elements 5, 6, 7 and 8 as shown in Figure 2 of Drouet et al.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 28, 42 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drouet et al (French patent 2 599 344). It would have been obvious to change the number, size or position of the vertical elements of Drouet et al since it is an obvious matter of routine optimization depending upon the degree of humidifying the atmosphere within the enclosure desired. Furthermore, the claimed U-shaped channel set forth in claim 42 is considered to be an obvious design feature and well within the ordinary skill of one in the art. Note that there is no invention in merely changing the shape or form of an article without changing its function except in a design patent. See *Eskimo Pie Corp. v. Levous et al*, 3 USPQ 23.

Allowable Subject Matter

Claims 35 and 36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Prior Art Citation

The Vallee patent is cited to show a steam generator for use in a convection oven. The Mangina patent is cited to show a cooking oven provided with a moisture measurement arrangement.

Conclusion

Any inquiry concerning this communication from the examiner should be directed to Examiner George C. Yeung whose telephone number is (571) 272-1412. The examiner can generally be reached on Monday-Friday from 10:30 a.m. to 7:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1201.

G.C. Yeung/dh
February 17, 2004



**GEORGE C. YEUNG
PRIMARY EXAMINER**